

**SUBPART 208.6—ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.**

*(Added August 12, 2008)*

**208.602-70 Acquisition of items for which FPI has a significant market share.**

(a) *Scope.* This subsection implements Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(b) *Definition.* “Item for which FPI has a significant market share,” as used in this subsection, means an item for which FPI’s share of the DoD market for the federal supply class including that item is greater than 5 percent, as determined by DoD in consultation with the Office of Federal Procurement Policy. A list of the federal supply classes of items for which FPI has a significant market share is maintained at

[http://www.acq.osd.mil/dpap/cpic/cp/specific\\_policy\\_areas.html#federal\\_prison](http://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison).

(c) *Policy.*

(1) When acquiring an item for which FPI has a significant market share—

(i) Acquire the item using—

(A) Competitive procedures (e.g., the procedures in FAR 6.102, the set-aside procedures in FAR Subpart 19.5, or competition conducted in accordance with FAR Part 13); or

(B) The fair opportunity procedures in FAR 16.505, if placing an order under a multiple award delivery-order contract; and

(ii) Include FPI in the solicitation process, consider a timely offer from FPI, and make an award in accordance with the policy at FAR 8.602(a)(4)(ii) through (v).

(2) When acquiring an item for which FPI does not have a significant market share, acquire the item in accordance with the policy at FAR 8.602.

**208.606 Evaluating FPI performance.**

See DoD Class Deviation [2012-O0018](#), Past Performance Evaluation Requirements, issued on September 20, 2012. This class deviation requires past performance reporting for contracts awarded under FAR subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who are Blind or Severely Handicapped, when the thresholds in Class Deviation 2012-O0017 are exceeded. This deviation is effective until incorporated in the DFARS or rescinded.